REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested. Claims 1 to 27 are in the case.

Embodiments of the present invention

Various embodiments of the present invention relate to a method and system for tracking a person's movements as a person moves from location to location. To this end, the person is provided with a reader, while machine-readable identification codes are provided at each location to provide location information for that location. The reader is operable to read these machine-readable location identification codes. On arrival at a particular location, the person can use the reader to read the location identification code provided at that location. This reading of the machine-readable location identification code determines an arrival time, which can then be recorded. Subsequently, on departure of the person from a location, the reader can again be used to read the machine-readable location identification code to determine a departure time based on when this machine-readable location identification codes is read.

Claim rejections

Claims 1 to 5, 8 to 17 and 20 to 27 have been rejected as obvious in view of the combined teachings of U.S. Patent Nos. 5,311,423 (Clark) and 4,011,434 (Hockler). In addition, claims 6, 7, 10-12, 18 and 19 have been rejected as being obvious in view of the teachings of these references when further combined with the teachings of U.S. Patent No. 3,648,243 (Wiggins). These rejections are respectfully traversed for the reasons set out below.

Prior art

Clark

Clark describes a system for managing an inventory of videocassettes for use in an automated broadcasting facility. Specifically, Clark describes a system in which each videocassette is tagged with a unique barcode, and each location where a videocassette might be stored is also tagged with a unique barcode. Portable scanners are used to associate an employee ID, a videocassette code, a location code, and a time and date stamp together to track inventory and to provide accountability for the videocassettes.

Hockler

Hockler describes a system for tracking the coming and going of employees, similar to the punch-card systems of old. Rather than using paper cards, the elapsed time worked and other payroll data is recorded on portable magnetic-striped cards, which employees carry and insert into fixed stand-alone terminals as they arrive and depart their work location. These terminals read the data on the card, then update the data based on whether the employee is signing in or out.

Wiggins

Wiggins describes a system of a plurality of keypad stations, where employees can manually enter time in, time out, and task identifier codes. Users of the system depress an 'in' key and a numerical task code when they begin working on a task, and depress an 'end' key when they finish the task. The time in, time out, and task ID data is recorded in machine-readable form for use by accounting to generate invoices.

Detailed reply to claim rejections

It is respectfully submitted that Hockler does not disclose the several elements recited in clauses c), d) and e) of claim 1. More specifically, Hockler does not disclose machine-readable location identification codes, reading machine-readable location identification codes with a reader, or recording service information comprising the arrival time and departure time. Each of these deficiencies in Hockler is discussed in turn below.

1. Hockler does not disclose machine-readable location identification codes at all

According to aspects of the claimed invention, at least one machine-readable location identification code is provided at a location to provide location information for the location. This machine-readable location identification code can then be read by a reader.

In Hockler, the described method does not involve the use of machine-readable location identification codes. In Hockler, users of the system are given magnetic-striped cards for recording information from a stand-alone terminal. The terminal is in a fixed location; however, location-specific information is not recorded onto the magnetic-striped cards. While the description describes the potential for there to be more than one stand-alone terminal located at a work facility (see 2/41-46), the terminal does not encode location information onto the employee card.

Thus, Hockler does not teach reading a first read machine-readable location identification code, as the system described in Hockler does not involve location codes. Likewise, Hockler does not teach reading a last-read machine-readable location identification code.

2. Hockler does not disclose reading machine-readable location identification codes with a reader

As above, it appears that Hockler does not disclose machine-readable location identification codes at all. Consequently Hockler cannot teach reading a machine-readable location identification code with a reader.

However, even if the system in Hockler were read to somehow involve machine-readable location identification codes, it clearly does not teach reading machine-readable location identification codes with a reader. In the claimed invention the machine-readable location identification codes are provided at a location, and a user reads the machine-readable location identification code with a reader. In Hockler, the stand-alone terminal reads time data from the magnetic-striped card, and writes time data to the magnetic-striped card. Applicant fails to see what part of the system in Hockler is analogous to the reader in the present invention. If the examiner is asserting that the stand-alone terminal is the reader, then the applicant respectfully notes that the reader is not provided to the user as in the current invention in the sense that is not mobile. If the examiner is asserting that the magnetic-striped card is the reader, then the applicant respectfully notes that the magnetic-striped card is read, and written to, but does no actual 'reading' of any data.

Thus, Hockler does not disclose reading a machine-readable location identification code with a reader.

3. Hockler does not disclose recording service information data comprising the arrival time and departure time.

In Hockler, the first time an employee uses their magnetic-striped card with a stand-alone terminal, the data encoded consists of an employee ID number, cumulative hours worked, the time at which the card was last updated, whether this time was a check-in time or a check-out time, and the Julian day of the time at which the card was last

updated. During subsequent uses, the data on the card is updated to reflect the total cumulative hours worked. This is not accomplished by recording discrete arrival and departure times, as is the method of the claimed invention.

According to the system in Hockler, when an employee 'checks-out' at the end of a shift, the cumulative hours data stored on the magnetic-striped card is incremented by the difference between the last transaction time recorded on the card and the current time, the last transaction time is overwritten with the current time, and the indicator is changed to signal that the last transaction time is a check-out time. This is shown in Figure 2 of Hockler, where line X represents the data on a blank magnetic-striped card, line Y represents the data stored on the card after the initial check-in, and line Z represents the data after check-out. Note that the data in line Z does not explicitly contain a departure time and an arrival time.

While it may be possible to infer an arrival time, this could only be done after the first check-out, and there is no indication contained in the data that as to the number of shifts have been recorded on the card – for example, based on the sample data shown in line Z, one could infer that if the employee checked-out at 10:00, and has worked a total of 2 hours, then she must have arrived at 8:00. However, if the employee had checked-in at 7:00, checked-out at 8:00, checked-in at 9:00, and checked-out at 10:00, her card would contain the same data shown in line Z.

Thus, Hockler does not teach recording service information data comprising the arrival time and departure time.

Given that for the foregoing reasons Hockler does not disclose various features of the method as claimed in claim 1, clauses c), d) and e), it is respectfully submitted that the subject matter of claim 1 cannot be obtained by combining the teachings of Clark and Hockler. Specifically, the Examiner has already admitted that Clark does not teach the features of clauses c), d) and e). If the Examiner elects to maintain her rejection of claim

1, then clarification is respectfully requested. Specifically, the Examiner is respectfully requested to identify specifically which elements of Hockler correspond to machine-readable location identification codes, reading these machine-readable location identification codes with a reader, and recording service information including the arrival time and departure time.

For analogous reasons, it is respectfully submitted that system claim 13 also clears the art cited.

Not obvious to combine

Even if the teachings of Clark and Hockler can somehow be read to recite all of the elements of claims 1, it is respectfully submitted that it would not have been obvious to combine the teachings of these references as they relate to different fields that are not obviously related. That is, Hockler deals with tracking employees (the patent describes an electronic time-part system for allowing employees to record the time spent at their work location), while Clark describes an inventory management system, not an employee management system. The fact that these prior art references are from apparently non-related fields, makes it more important that the Examiner provide a clear reason for combining the teachings of these references.

With regard to the determination of obviousness under 35 U.S.C. § 103, the Supreme Court has stated that:

> Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, *it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does*. This is so because

> inventions in most, if not all, instances rely on building blocks long since uncovered, and claimed discoveries almost of necessity will be combination of what, in some sense, is already known.

KSR International Co. v. Teleflex Inc., __U.S.___,___, 2007 WL 1237837 (2007), (Slip Opinion at 14-15) (emphasis added).

Please note that in the present case, the systems of Clark and Hockler cannot be combined according to the established functions, as these functions are quite different. That is, employee management, and inventory management are inherently different fields of activity.

> Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit.* See *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, *there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness*").

Id., at ___ (Slip Opinion at 14) (emphasis added). It is noted that the Supreme Court included an extended discussion reciting the nature of the inventions disclosed in the prior art and then several paragraphs identifying the rationale and reasons that the cited art could be combined and why one skilled in the art would make such a combination. *Id.*, at ___ (Slip Opinion at 3-6, 20-22).

With regard to combining known elements of an invention, the Supreme Court further stated that, "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *Id.*, at ___ (Slip Opinion at 14). This holding comports with *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), which held that, although some of the cited references individually may have some of the claimed inventions' features, "one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention." *Id.* at 1075. Instead, to reach the proper conclusion under §103:

> The decision maker must step backward in time and into the shoes worn by [a person having ordinary skill in the art] when the invention was unknown and just before it was made. In light of *all* the evidence, the decision maker must then determine whether...the claimed invention as a whole would have been obvious at *that* time to *that* person.

Id. at 1073-74. (emphasis added).

The Examiner has not properly supported the rejection under 35 U.S.C. § 103(a) and under *KSR International*. In the Office Action, the Examiner has merely identified a list of selected elements recited in the present application and located various references, wherein the Examiner contends similar elements are disclosed. As set forth above, Applicants further dispute that these elements are similar to the elements recited in the claims of the present application. Further, the Examiner has not "made explicit" the reason such references would, or could, be combined as suggested. That is, the Examiner has, after identifying a number of elements in the prior art, stated that, "it would have been obvious to one having ordinary skill in the art to combine Clark with Hockler because Hockler involves calculating a lapse time spent at a particular location by employees." With respect, this does not make it at all clear why it would have been obvious to modify Clark based on the teachings of Hockler, as Clark is not concerned with determining how much time employees spend at particular locations. Accordingly, it is respectfully submitted that the Examiner has failed to provide an "articulated

reasoning with some rational underpinnings" sufficient to support the conclusion of obviousness. That is, the Examiner has failed to describe the "interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art." Moreover, as set forth by the Court in *KSR International*, a "patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." In fact, the single sentence provided by the Examiner is the type of "mere conclusory statement" that the *KSR International* Court held cannot properly support a rejection under 35 U.S.C. § 103.

Moreover, given that the Examiner has provided a single conclusory statement regarding the combination of these references, the Examiner has failed to identify a realistic motivation for combining these references and has failed to discuss how such a combination would be accomplished. In particular, the Examiner has failed to explain why someone seeking to modify the inventory tracking device taught by Clark would look to Hockler. Further, even if such a skilled person would seek to modify Clark based on the teachings of Hockler, the Examiner has not made it clear how the teachings of these different references would be combined. Specifically, it is not at all apparent to the Applicant how the magnetic-striped cards and fixed stand-alone terminals taught by Hockler could be combined to advantage with the system taught by Clark, so as to provide all of the elements of claims 1 and 13.

Accordingly, if the Examiner elects to maintain her rejection of the claims based on the teachings of Clark and Hockler, then clarification is respectfully requested. Specifically, in accordance with the requirements of *KSR International*, the Examiner is respectfully requested to identify what specific element of Hockler correspond to the elements recited in claims 1 and 13; how these specific elements of Hockler could be combined with various features taught by Clark to provide the claimed subject matter, and what are the reasons that would have prompted a person of ordinary skill in the art to combine the features of these two prior art references in this manner.

Depending claims

It is further respectfully submitted that the remaining claims also clear the art cited as these claims depend from claim 1 or claim 13.

In view of the foregoing, it is respectfully submitted that the claims clear the art cited. Accordingly, favorable reconsideration and allowance of the present application is respectfully requested.

Respectfully submitted,

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